

Remarks:

Claims 9–20 were previously pending with claim 9 being independent. Claim 9 is herein amended and claims 12, 14, 16, and 18 are herein cancelled, therefore claims 9–11, 13, 15, 17, and 19–20 are currently pending with claim 9 being independent. In the Office Action dated April 6, 2005 (“OA”), claims 9–20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Patrick C. Hoffman, “Optimum Growth Rates for Holstein Replacement Heifers.”

Applicant initially notes that Optimum Growth relates to the management of replacement heifers in a dairy operation and, in particular, to target growth rates of heifers that have been placed in the replacement heifer program. The application invention, in contrast, relates to a quality assurance program for the production of meat products. Therefore, Optimum Growth is non-analogous art and improperly cited against the claims of the present application.

Turning now to the rejection of claim 9, Applicant notes that claim 9 has been amended to incorporate elements previously recited in claims 12, 14, 16, and 18. Optimum Growth does not teach or suggest each element of amended claim 9. Optimum Growth does not teach or suggest, for example, an initiation standard including a minimum birth weight, or growth standards including a minimum twelfth week weight, a minimum seventeenth week weight, and a minimum growth rate as recited in claim 9. Furthermore, Optimum Growth does not teach or suggest culling animals that do not meet the initiation standard or growth standards.

Applicant notes that Optimum Growth teaches replacement heifer target growth rates, and corrective programs for ensuring heifers already identified as replacement heifers reach the target growth rates. Optimum Growth does *not* teach removing underperforming animals from a program. Furthermore, Optimum Growth teaches away from culling underperforming animals because removing heifers from the program is financially disadvantageous. Optimum Growth teaches, for example, that replacement heifers are “expensive to raise, are labor intensive, and return on investment

is relatively slow.”

Regarding the rejection of claim 9, it was asserted in the Office Action that “Optimum Growth teaches selecting the largest or heaviest calves to be placed on a development program, in that, these are more likely to reach puberty sooner, and thus gain weight faster.” (OA, page 2). Applicant respectfully disagrees. In fact, it is not clear which portion of Hoffman the Examiner is relying on to teach this. Hoffman states on page 5 that “[c]alf body weight was determined to be 93 lb (3) and weaning was assumed to occur at 2 mo of age at 185 lb (4).” This statement, of course, does not mention selecting a calf based on body weight, but simply states the weight of calves that were used in the research to determine optimal prepartum body weight.

Hoffman also states on page 7 that “[b]irth dates of replacement heifers are recorded, heifers are identified. Heifers are measured (heart girth, wither height, body condition score) at breeding and 14 d prepartum. Growth rate, age/weight relationships, etc., can be calculated.” This statement also fails to mention selecting a calf based on body weight. In fact, the statement quoted above makes it clear that the only action taken at birth is recording of birth date and identification of the heifers. The heifers are then measured at breeding and prior to prepartum in order to determine a growth rate. Thus, this statement emphasizes measurement at later stages in the cow's life, not at twelve weeks and seventeen weeks.

It should also be noted that where Hoffman discusses an optimum calving age, such as on page 1, or an “optimum body size criteria of Holstein replacement heifers at first calving” on page 3, Hoffman is referring to the age/size of the replacement heifer when it gives birth to a calf, not when the replacement heifer itself is born. This is illustrated in table 2 on page 3, which indicates that an average weight at first calving is 1231 pounds.

Therefore, these portions of Optimum Growth cannot be relied upon to support the Examiner's assertion that “Optimum Growth teaches selecting the largest or heaviest calves to be placed on a development program, in that, these are more likely to reach puberty sooner, and thus gain weight faster.” Optimum Growth simply does not

teach or suggest establishing standards for initiation into a program, wherein the initiation standards include a minimum birth weight. Rather, Optimum Growth teaches target growth rates of replacement heifers, and ensuring that heifers already identified as replacement heifers reach the target growth rates.

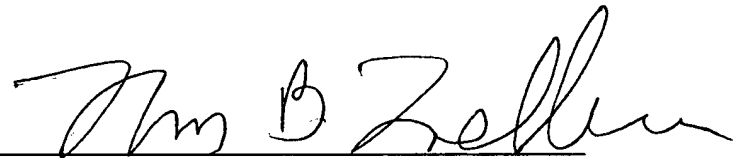
It was further asserted in the Office Action that "it would have been obvious to a person of ordinary skill in the art at the time the invention was made to remove an animal from the development program that does not meet the growth standards in order to maximize the potential profit of the remaining animals." (OA, page 2). Applicant respectfully disagrees. As explained above, Optimum Growth teaches maximizing potential profits by defining optimum growth rates and by "defining replacement heifer growth to a greater degree of accuracy," (page 7, conclusions), *not* by removing heifers from a program. For example, Optimum Growth states that "[g]uidelines should be available to monitor the replacement heifer growth at any stage of growth and if deficient, corrective management programs can be implemented." (Page 7, ¶ 2). Thus, Optimum Growth teaches addressing the problem through a *corrective management program*, not through culling underperforming heifers as recited in claim 9.

For at least the reasons set forth above, applicant respectfully submits that claims 9–11, 13, 15, 17, and 19–20 are now in allowable condition and requests a Notice of Allowance. In the event of further questions, the Examiner is urged to call the undersigned. Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,

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BY: _____

A handwritten signature in black ink, appearing to read "Tom B. Luebbering", written over a horizontal line.

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